

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

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TOSHUA COURTHAN,

Plaintiffs,

-against-

THE CITY OF NEW YORK, POLICE OFFICER VLADIMIR MACHULSKIY (SHIELD # 27721), NEW YORK CITY POLICE OFFICER JOHN DOE #1, and POLICE OFFICERS JOHN DOES #2-5 (names and numbers of who is unknown at present), and other unidentified members of the New York City Police Department,

Defendants.

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SUMMONS

Index #

The basis of venue is:

Place of Incident

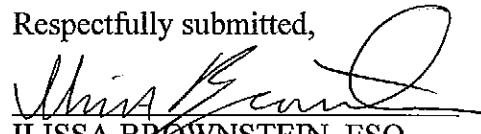
Plaintiff designates Brooklyn County as the place of trial.

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
May 19, 2014

Respectfully submitted,


ILISSA BROWNSTEIN, ESQ.
Attorney for Plaintiff
22 Cortlandt Street, 16th Floor
New York, New York 10007
(212) 691-3333

CITY OF NEW YORK
CORPORATION COUNSEL
100 Church Street
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

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TOSHUA COURTHAN,

Plaintiffs,
-against-

Index #

Verified Complaint

THE CITY OF NEW YORK, POLICE OFFICER VLADIMIR MACHULSKIY (SHIELD # 27721), NEW YORK CITY POLICE OFFICER JOHN DOE #1, and POLICE OFFICERS JOHN DOES #2-5 (names and numbers of who is unknown at present), and other unidentified members of the New York City Police Department,

Defendants.

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Plaintiff **Toshua Courthan**, by her attorney, ILISSA BROWNSTEIN, ESQ., as and for the Complaint herein, alleges upon information and belief as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action to recover money damages arising out of defendants' violation of plaintiffs' rights as secured by the Civil Rights Act, 42 U.S.C. Section 1983, the rights secured by the First, Fourth, and Fourteenth Amendments to the United States Constitution and the laws of the State of New York. Plaintiff was unlawfully arrested by the defendants. Plaintiff was deprived of her federal constitutional and state constitutional and common law rights when the individually named police officer defendants unlawfully confined plaintiff, caused the unjustifiable arrest of plaintiff and malicious prosecution of plaintiff. Defendants additionally used excessive force in violation of Plaintiff's constitutional rights protected by the Eighth Amendment and the state tort laws.

PARTIES

2. Plaintiff TOSHUA COURTHAN is a citizen of the United States and a resident of Brooklyn, New York.
3. POLICE OFFICER VLADIMIR MACHULSKIY (SHIELD # 27721) is and was at all times relevant herein an officer, employee, and agent of the New York City Police Department.
4. Police Officer VLADIMIR MACHULSKIY is being sued in his individual capacity and official capacity.
5. New York City Police Officers John Does #1-5 are and were at all times relevant herein officers, employees, and agents of the New York City Police Department.

6. Police Officers John Doe #1-5 are being sued in their individual capacity and official capacities.
7. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the New York City Police Department, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the New York City Police Department at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the New York City Police Department and incidental to the lawful pursuit of their duties as officers, employees and agents of the New York City Police Department.
8. Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The defendant City of New York assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the New York City Police Department.
9. Plaintiff in furtherance of her State causes of action filed a timely Notice of Claim upon the City of New York in compliance with Municipal Law Section 50.
10. More than thirty (30) days have elapsed since service of said Notice of Claim was filed and the City of New York has failed to pay or adjust the claim.
11. The City of New York held a 50(H) hearing examination of the Plaintiff on September 19, 2013.

STATEMENT OF FACTS

18. Toshua Courthan is 41 years old.
19. This is her first arrest.
20. Ms. Courthan is employed by Services for the Underserved and has been employed there since April 2008. She is an Assistant Director/Substance Abuse Specialist.
21. Ms. Courthan is a graduate of Touro College with a BS in Human Services.
22. There was an abandoned car partially blocking Ms. Courthan's driveway at her home in Brooklyn, New York for four months since Hurricane Sandy. This car had no license plates, was kept unlocked and had no personal property inside. Ms. Courthan placed notices inside the windshield and wrote messages in lipstick on the windshield. No one claimed the car.

23. Ms. Courthan called the police department for instructions on how to deal with the vehicle and she was advised by Police Officer Scrapotti of the 69th Precinct to have the car towed. Ms. Courthan had the car towed as well as her own vehicle towed.
24. Ms. Courthan never represented that the car blocking her driveway was her car. She never signed any documents conveying ownership or possession.
25. On February 26, 2013 at 12pm Ms. Courthan voluntarily surrendered to the 69th Precinct after members of the NYPD came to her home and spoke with her daughter. She was thereafter arrested.
26. Ms. Courthan was held in jail for 24 hours before receiving a straight ACD.
27. Although Ms. Courthan suffers from asthma, she was deprived of her inhaler during her incarceration. She had to scream for a while to get someone to bring it to her. The officers walked by and did nothing. She learned when she got to Central Booking that the officers left her asthma pump at the precinct. She never was able to use it. After her release from jail it took two hours on the phone with a police officer for Ms. Courthan to get the NYPD to agree to return her inhaler.
28. Ms. Courthan was menstruating and was denied access to sanitary products.
29. Ms. Courthan missed 1.5 days of work on account of her arrest. She was obligated to use her vacation time. Her employer found out she was arrested through the Department of Education. Her job was in jeopardy.
30. Ms. Courthan is being sued for \$4000 in a pending lawsuit by the owner of the towed vehicle.
31. Ms. Courthan saw a social worker after her arrest on account of her emotional distress.
32. Ms. Courthan filed a notice of claim on April 29, 2013.

FIRST CAUSE OF ACTION

VIOLATION OF PLAINTIFF'S FOURTH AMENDMENT AND FOURTEENTH AMENDMENT RIGHTS

33. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 32 with the same force and effect as if more fully set forth at length herein.
34. The individually named defendants who were acting in concert and within the scope of their authority at the NYPD arrested and caused plaintiff to be imprisoned without probable cause and conducted an unlawful search of plaintiff in violation of plaintiff's right to be free of an

unreasonable seizure under the Fourth Amendment of the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

SECOND CAUSE OF ACTION

FALSE ARREST & FALSE IMPRISONMENT

35. Plaintiff repeats and realleges paragraphs 1 through 34 as if fully set forth herein.
36. The acts and conduct of the defendants constitute false arrest and false imprisonment under the laws of the State of New York. Defendants intended to confine plaintiff and, in fact, confined plaintiff, and plaintiff was conscious of the confinement. In addition, plaintiff did not consent to the confinement and the confinement was not otherwise privileged.
37. The individually named defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.
38. The City, as the employer of the officer defendants, is responsible for their wrong doing under the doctrine of respondeat superior.

THIRD CAUSE OF ACTION

INVASION OF PRIVACY

39. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 38 with the same force and effect as if more fully set forth at length herein.
40. Defendants their agents, servants and employees, acting within the scope of their employment, intentionally, willfully and maliciously subjected plaintiff to an illegal search, and in doing so violated plaintiff's right to privacy.
41. Defendants were at all times agents, servants, and employees acting within the scope of his employment by the City of New York and the NYPD which are therefore responsible for their conduct.
42. The City, as the employer of Defendant is responsible for the wrongdoing under the doctrine of respondeat superior.

FOURTH CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, TRAINING AND SUPERVISION

43. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 42 with the same force and effect as if more fully set forth at length herein.
44. The City of New York and its employees, servants and/or agents acting within the scope of their employment did negligently hire, retain, train and supervise the individually named defendants, individuals who were unfit for the performance of NYPD duties.

FIFTH CAUSE OF ACTION

FAILURE TO INTERVENE

45. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 44 with the same force and effect as if more fully set forth at length herein.
46. Defendants had an affirmative duty to intervene on behalf of plaintiff, whose constitutional rights were being violated in their presence by other members of the NYPD.
47. Defendants failed to intervene to prevent the unlawful conduct described herein.
48. As a result of the foregoing, plaintiff was physically assaulted and subjected to an illegal search.
49. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the NYPD, which are therefore responsible for their conduct.
50. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

SIXTH CAUSE OF ACTION

NEGLIGENCE

51. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 50 with the same force and effect as if more fully set forth at length herein.
52. Defendants owed a duty of care to plaintiff.

53. Defendants breached that duty of care by subjecting her to an illegal search.
54. As a direct and proximate cause of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.
55. All of the foregoing occurred without any fault by plaintiff.
56. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

SEVENTH CAUSE OF ACTION

NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS

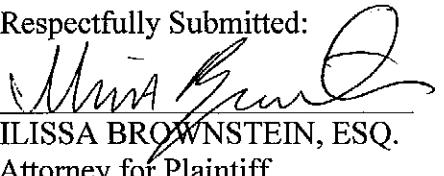
57. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 56 with the same force and effect as if more fully set forth at length herein.
58. By the actions described herein, the individually named police officer defendants, each acting individually and in concert with each other, engaged in extreme and outrageous conduct, conduct utterly intolerable in a civilized community, which negligently caused severe emotional distress to plaintiff. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to plaintiff and violated plaintiff's statutory and common law rights as guaranteed plaintiff by the laws and Constitution of the State of New York.
59. As a result of the foregoing, plaintiff was deprived of liberty and sustained great emotional injuries.
60. The City, as the employer of the defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

WHEREFORE, TOSHUA COURTHAN, plaintiff, demands a judgment against the defendants on each cause of action in amounts to be determined upon the trial of this action which exceeds the jurisdiction of lower courts, inclusive of punitive damages and attorney's fees inclusive of costs and disbursements of this action, interest and such other relief as is appropriate under the law.

Dated: New York, New York
May 19, 2014

Respectfully Submitted:

By:


ILISSA BROWNSTEIN, ESQ.
Attorney for Plaintiff
22 Cortlandt Street (16th Floor)
New York, New York 10007
(212) 691-3333

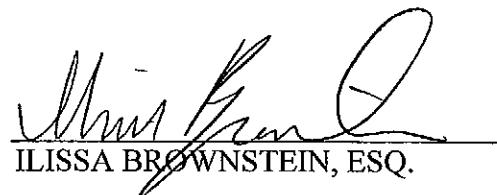
TO: CITY OF NEW YORK
CORPORATION COUNSEL
100 Church Street
New York, NY 10007

ATTORNEY'S VERIFICATION

ILISSA BROWNSTEIN, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at the law firm of **ILISSA BROWNSTEIN, ESQ.**, I have read the annexed **VERIFIED COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files. The reason this verification is made by me and not Plaintiff is that Plaintiff does not reside in the county wherein I maintain my office.

DATED: New York, New York
May 19, 2014



ILISSA BROWNSTEIN, ESQ.